

## SITE LOCATION AND DEVELOPMENT AGREEMENT

**THIS SITE LOCATION AND DEVELOPMENT AGREEMENT** (this "**Agreement**") is hereby made and entered into as of the 15<sup>th</sup> day of December, 2010 (the "**Effective Date**"), by and among **ELECTROLUX HOME PRODUCTS, INC.** or its assignee (the "**Company**") and the **STATE OF TENNESSEE** (the "**State**"), **SHELBY COUNTY, TENNESSEE** (the "**County**"), the **CITY OF MEMPHIS, TENNESSEE** (the "**City**"), and together with the "**County**", the "**Local Governments**", **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE** (the "**IDB**"), and those certain agencies or departments of the Government of the State described herein, including the IDB, and who are signatories hereto (the "**Agencies**" and together with the State and the Local Governments, collectively, the "**Public Authorities**"). The Company and the Public Authorities may from time to time be referred to individually as a "**Party**" and collectively as the "**Parties**."

### WITNESSETH:

**WHEREAS**, the Company is engaged principally in the design, production and sale of household and industrial appliances; and

**WHEREAS**, the Company has a long-standing relationship with the State through the Company's existing appliance manufacturing facility in Springfield, Tennessee; and

**WHEREAS**, the Company is contemplating the establishment of an appliance manufacturing and assembly facility, warehouse and distribution facility, and a regional headquarters facility (collectively the "**Project**"); and

**WHEREAS**, the Company's plans and intentions with respect to the Project require that it be constructed and start production in accordance with a Project Schedule and that such Project Schedule and subsequent operations not be adversely impacted by undue delays or unanticipated costs associated with permitting requirements and/or site conditions; and

**WHEREAS**, the Company anticipates that the Project, if fully implemented, has the potential to eventually employ more than one thousand two hundred forty (1,240) Company employees and to require a capital investment by, or on behalf of, the Company of approximately One Hundred Ninety Million Dollars (\$190,000,000); and

**WHEREAS**, the Company anticipates that the Project, if fully implemented, has the potential to attract in excess of Two Thousand Two Hundred Sixty (2,260) additional jobs as a result of suppliers and vendors locating in proximity to the Project to serve the needs of the Company, and in conjunction with potential additional investment by the Company, may result in total additional investment in excess of Five Hundred Fifty Million Dollars (\$550,000,000); and

**WHEREAS**, the Public Authorities enthusiastically support and encourage business and industrial development within the State and are desirous of having the Company establish the Project within the State; and

**WHEREAS**, the Public Authorities enthusiastically support education and training as an element of business and economic development and as an integral component to the successful operation of the Project; and

**WHEREAS**, the Company has conducted a multi-national search for a suitable location for the Project and narrowed its search to multiple sites within the United States and Mexico;

**WHEREAS**, subject to the terms and conditions hereof, the Company has decided to establish the Project within the State at the Frank Pidgeon Industrial Park (the "**Park**") in the City and the County, to be located on an approximately six hundred forty (640) acre-site, and an additional one hundred fifty (150) acre-site, each within the Park; and

**WHEREAS**, the Company intends to treat the benefits granted by the Public Authorities hereunder as a non-shareholder contribution to the Company's capital under Section 118 of the I.R.C. of 1986, as amended, and to treat such benefits as a material inducement to the Company to locate the Project in the State, and as benefits that (i) are not compensation to the Company for specific quantifiable goods or services provided to the Public Authorities by the Company, (ii) will become a permanent part of the Company's working capital structure, (iii) will result in a benefit to the Company commensurate with its value, (iv) will be used by the Company or will contribute to the production of additional income, and (v) have been bargained for by the Company and the Public Authorities; and

**WHEREAS**, the Public Authorities hereby find that the Project and the benefits granted hereunder serve a public purpose within the meaning of the Tennessee Constitution, are well conceived and will provide economic development and employment within the City, the County and the State, enhancing the health, safety and welfare of its citizens; and

**WHEREAS**, the Public Authorities have made specific proposals to the Company for the purpose of inducing the Company to establish the Project within the Park; and

**WHEREAS**, the Parties are desirous of setting forth the proposals and respective commitments of the Public Authorities and the Company in a valid, binding and enforceable agreement, as more fully described herein, which shall, on the Effective Date, become legally binding obligations of the Parties;

**NOW, THEREFORE**, upon and in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## ARTICLE I CAPITALIZED AND/OR ITALICIZED TERMS

**Section 1.1 Capitalized and/or Italicized Terms.** Capitalized and/or italicized terms utilized herein shall have the meaning ascribed thereto in Article XIII hereof, unless the meanings of such terms have been otherwise specified in a different context.

## ARTICLE II DETERMINATIONS BY THE PARTIES

**Section 2.1 The Site.** The Company has identified a parcel of land consisting of approximately six hundred forty (640) acres at the Park (the "*Main Facility Site*"), as well as a parcel of land consisting of not more than one hundred fifty (150) acres at the Park for use as a transportation, material handling and distribution site (the "*Distribution Site*") (the Main Facility Site and the Distribution Site hereinafter collectively the "*Project Site*"), each as more specifically described in EXHIBIT 2.1 hereto (with such description to be further defined based on the results of the Survey) as a suitable location of the Project in the United States.

**Section 2.2 Location Inducements.** The Public Authorities have determined and hereby covenant to perform the following:

(a) to utilize their respective best efforts to transfer, or to cause to be transferred, the fee simple title to the Project Site and improvements thereon to the IDB, for the benefit of the Company, by January 31, 2011, and otherwise in accordance with the terms and conditions of this Agreement; and

(b) to deliver and implement each of the other commitments and inducements set forth herein for the benefit of the Company, in accordance with the terms and conditions set forth herein.

**Section 2.3 Decision to Locate.** The Company intends to locate the Project on the Project Site, subject to:

(a) approval of the terms and conditions of this Agreement by the Board of Directors of the Company;

(b) fulfillment of all obligations by the Public Authorities as set forth in this Agreement; and

(c) execution of the State Tax Incentive Agreement and fulfillment of the terms and conditions thereof.

**Section 2.4 Necessary Approvals.** The obligation of the Public Authorities hereunder, and any Ancillary Agreements, are contingent upon any necessary approvals required

by applicable law, including, without limitation, approval of this Agreement by the Memphis City Council, the Shelby County Board of Commissioners and the IDB.

### ARTICLE III GENERAL TERMS

**Section 3.1 Designation of Coordinators.** The Public Authorities acknowledge that it is in the best interests of the Company and the Public Authorities for the development, design, engineering, construction, equipping and start-up of the Project to proceed on an expeditious timetable and that time is of the essence to achieve the milestones to be set forth in a schedule to be delivered by the Company to the Public Authorities as soon as practicable following the Effective Date (the "***Project Schedule***"). Accordingly, in order to proceed in accordance with the Project Schedule, for the purpose of ensuring that all administrative details relating to the Project are processed in the most efficient and expeditious fashion, the Public Authorities shall, commencing upon the Effective Date or as otherwise specified below, utilize their respective best efforts to cause, without cost, liability or expense to the Company, the following qualified coordinators to be appointed to act as the Public Authorities' representatives to assist the Company in implementing and fulfilling the terms and conditions of this Agreement (collectively the "***Coordinators***"):

- (a) A Local Development Project Coordinator on a full-time basis for the duration of construction of the Project, and on an as-needed basis thereafter;
- (b) An Environmental Coordinator on an as-needed basis during the construction of the Project and thereafter;
- (c) A representative from the Tennessee Department of Labor to coordinate the State's workforce recruitment efforts in support of the Project;
- (d) A Tax Coordinator on an as-needed basis through five (5) years after the Effective Date;
- (e) A Public Policy Advocacy Coordinator on an as-needed basis for five (5) years after the Effective Date; and
- (f) A Public Relations & Communications Coordinator on an as-needed basis for five (5) years after the Effective Date.

The appointment of any of the Coordinators set forth in this Section 3.1 (a) – (f) shall be made following good-faith consultation with the Company, and subject to the final approval of the Company, which will not be unreasonably withheld. Any request by the Company to change any such Coordinator shall not be unreasonably denied by the Public Authorities.

### **Section 3.2 Assistance with Permits.**

(a) The Public Authorities agree:

(i) to do all things and take all actions necessary to cooperate with and assist the Company in its timely filing of all applications deemed necessary by the Company for obtaining, modifying, transferring, and/or renewing all applicable Permits with the federal government, the State, the Local Governments and all applicable agencies of the same; such cooperation and assistance to include, when applicable, facilitating the timely consideration, processing, and issuance of all Permits required in connection with the establishment and subsequent operation of the Project. Such Permits shall include, but are not necessarily limited to, site plan approvals, construction and building permits, approvals for the abandonment and creation of all rights-of-way acquisitions and easements, and the Permits discussed in Article X of this Agreement, all to be issued on an expedited basis in order to permit construction of the Project to proceed in accordance with the Project Schedule; and

(ii) to use their respective best efforts to cause all Permit decisions necessary for construction and subsequent operation of the Project to be made within thirty (30) days (sixty (60) days if a public hearing is requested) after filing of the applicable and materially complete application for the relevant Permit in accordance with the applicable statutes and regulations.

(b) To the fullest extent legally permissible, each of the Local Governments shall waive all of its respective administrative, licensing and permitting fees or charges (other than fees associated with the PILOT Agreement) (collectively the "**Administrative Fees**") otherwise payable by the Company in connection with its compliance with all applicable local, State and federal laws, rules, regulations, orders, etc., from the date hereof through the completion of construction of the Project. To the extent that any Administrative Fees may not be waived by the Local Governments, the Company shall pay the same, and the Local Governments agree to reimburse the Company, for the aggregate amount of Administrative Fees so paid by the Company in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00).

**Section 3.3 Project Site Survey.** The Local Governments shall cause, at no cost or expense to the Company, an ALTA survey of the Project Site, in form and substance acceptable to the Company (the "**Survey**"), to be prepared by a licensed State surveyor acceptable to the Company, and presented to the Company within thirty (30) days following the Effective Date. The Local Governments further agree that the ALTA survey shall include a measured topographic survey of the Project Site and the Local Governments shall provide a number of copies adequate for the Company's use in preparing and conducting site grading and construction plans.

**Section 3.4 Economic Impact Report.** The State, through the Department of Economic & Community Development and in conjunction with the Center for Business and

Economic Research, University of Tennessee, shall, without cost, liability or expense to the Company, cause the preparation of an economic impact report and analysis to highlight the economic benefits to the State and its citizens associated with the Project contemplated in this Agreement. When completed, the State, through the Department of Economic & Community Development and in conjunction with the Center for Business and Economic Research, University of Tennessee, shall provide the Company with a copy of such report.

**Section 3.5 Additional Inducements and Incentives for Expansions.** The investments which may be made by the Company pursuant to this Agreement shall have no effect on, and shall neither restrict nor limit, any inducements and incentives to which the Company may become entitled in respect of any significant investment, expansion or creation of additional jobs beyond those specifically contemplated by this Agreement. The Public Authorities agree to enter into good-faith negotiations to provide such additional inducements and incentives to the Company as may be warranted at such time as the Company commits to make such significant additional investment, expansion or creation of additional jobs. The Public Authorities acknowledge that the Company may seek to negotiate incentives for additional phases of, or expansions to, the Project prior to the Start of Production or the fulfillment of its Base Employment Level. If so, the Public Authorities acknowledge that if the Company has yet to attain the Start of Production or its Base Employment Level, such circumstance shall have no impact on such additional incentive negotiations.

#### **ARTICLE IV CERTAIN TAX INCENTIVES**

**Section 4.1 Assistance with Tax Incentives.** The Public Authorities hereby covenant and agree to utilize their respective best efforts to make available to the Company, and to advise and assist the Company in obtaining, any and all tax abatements, rebates, exemptions or other incentives of any type or nature whatsoever for which the Company is or becomes eligible (whether or not specifically described in this Agreement) pursuant to the terms and conditions of the relevant law, rule or regulation authorizing the same, and the Public Authorities agree to provide reasonable assistance and cooperation as may be requested from time to time by the Company in order for the Company to so qualify.

**Section 4.2 Tax Reductions.**

(a) The Local Governments and the IDB hereby covenant and agree to utilize their respective best efforts to cause the Company to be provided a fifteen (15)-year reduction of real and personal property taxes (the "*Abatement Period*") to the Company under a Payment-in-Lieu-of-Tax Agreement (the "*PILOT Agreement*"), in form and substance acceptable to the Company, and providing among other things that the Company shall receive a 75% reduction in such taxes payable to the County, and a 90% reduction in such taxes payable to the City. The IDB shall enter into the PILOT Agreement with the Company as soon as practicable following the execution of this Agreement. Pursuant to the PILOT Agreement, the IDB shall agree to take title to certain real and personal property (as further described in the PILOT Agreement, and including but not limited to

the Project Site pursuant to Section 2.2(a) hereof) constituting a part of the Project. Because the property shall be owned by the IDB, which is a public corporation organized under the provisions of Code Section 7-53-101 et seq., all such property shall be eligible for property tax reductions or exemptions from property taxes normally paid to the Local Governments. Upon obtaining title to the Project Site, the IDB shall immediately lease such real and personal property to the Company pursuant to the terms and conditions of PILOT Agreement. The annual lease fee under the PILOT Agreement shall not exceed One Thousand Dollars (\$1,000) annually. Although legal title to such real and personal property may remain in the IDB throughout the Abatement Period, for all other purposes, the Company at all times shall be treated as the owner in terms of general accounting principles, tax depreciation, sales tax, maintenance and insurance responsibility. The PILOT Agreement shall also provide that the Project Site and any other real property (including improvements thereon) and personal property which is subject to the PILOT Agreement shall be reconveyed to the Company no earlier than the Start of Production, and thereafter upon the earlier to occur of the Company's request for such reconveyance, or the termination of the PILOT Agreement for any reason, such that the Company shall be the sole titleholder related to all such property. The aggregate consideration for the reconveyance of all assets subject to the PILOT Agreement shall not exceed One Thousand Dollars (\$1,000).

(b) The Local Governments and the IDB hereby covenant to use their respective best efforts to cause:

(i) the real property for the Project Site to be initially set at Eight Million Dollars (\$8,000,000)(the "**Agreed Value**"), which value shall be subject to reassessment every four (4) years during the entire term of the PILOT Agreement;

(ii) the PILOT Agreement to provide that such reassessment shall not cause the fair market value of the Project Site to increase by a cumulative amount greater than ten percent (10%) of the above Agreed Value at the end of the first four-year reassessment period, nor more than a ten percent (10%) cumulative increase at the conclusion of any subsequent four-year reassessment period over the previously determined Agreed Value; and

(iii) the fair and reasonable assessed value of the Company's real property improvements in the first full property tax year not to exceed the Company's actual cost of said real property improvements.

**Section 4.3 Property Tax Matters; Asset Classification for Personal Property.**

The Local Governments hereby covenant and agree to utilize their respective best efforts to assist the Company with classifying its personal property under State law and procedures to allow the Company to minimize any and all property tax liability which may otherwise be related to such personal property.

**Section 4.4 State Tax Incentive Agreement.** Prior to or contemporaneously with the execution of this Agreement, the State and the Company shall execute a separate agreement (in

form and substance acceptable to the Company) containing specific terms and conditions of the tax incentives to be provided by the State to the Company as part of the inducement to locate the Project within the State.

## ARTICLE V MAKING THE PROJECT SITE AVAILABLE

### Section 5.1 Title to Project Site.

(a) The Local Governments represent and warrant to the Company that they shall cause to be conveyed to the IDB valid title to the Project Site, together with (i) all buildings and other improvements located upon said real estate as of the Effective Date, (ii) all easements, mineral rights, oil and gas rights, riparian or other water rights, interests, claims, appurtenances and all other rights in any way belonging to or appertaining thereto and inuring to the owners, (iii) all right, title and interest in and to all streets, alleys, and other public ways located within the boundaries of said real estate and inuring to the owners, and (iv) all fixtures, equipment and personal property attached or appurtenant to or located on said Project Site (for purposes hereof, it is agreed that clauses (i) through (iv) shall be deemed included within the definition of the Project Site).

(b) Within thirty (30) days after the Effective Date, the Local Governments and the IDB shall deliver to the Company a commitment for title insurance (the "**Title Commitment**") issued by a title insurance company acceptable to the Company (the "**Title Company**"), in form and substance satisfactory to the Company, containing such endorsements as the Company may reasonably request, and in such amount as the Company shall determine, which shall not be for an amount in excess of the Company's good-faith estimate of the cost of the improvements to be made by the Company to the Project Site together with fixtures relating thereto plus Eight Million Dollars (\$8,000,000) (collectively the "**Estimated Real Property Value**"). The Local Governments covenant to the Company that they shall convey to the IDB good, valid, marketable and legal title to the Project Site, free and clear of all liens, encumbrances, easements and servitudes, and tenancies and other rights of occupation or use thereof, except those exceptions shown in the Title Commitment (the "**Existing Title Exceptions**"). Following completion of the procedures described in Section 5.1(c) below and prior to delivery of the Deed pursuant to Section 5.1(d), the Local Governments shall cause, at no cost or expense to the Company, the Title Company to issue an owner's/leasehold title insurance policy in favor of the Company ("**Title Policy**").

(c) The Local Governments acknowledge that the Company may determine, in its sole discretion, that certain of the Existing Title Exceptions might interfere with the use of the Project Site by the Company for its intended purpose ("**Impermissible Encumbrances**"), and the Local Governments hereby covenant and agree to cause, without cost, liability or expense to the Company, any and all Impermissible Encumbrances to be terminated as soon as possible following notice thereof to the Local



Governments by the Company. Further, the Local Governments covenant to cause, without cost, liability or expense to the Company, the removal of such Impermissible Encumbrances from the Title Commitment, or otherwise put in place documented arrangements and commitments pursuant to which such Impermissible Encumbrances will be addressed satisfactorily to the Company such that each such encumbrance shall be allowed as exceptions to title in the Title Policy, but only until satisfied by the Local Governments pursuant to such documented arrangements at which time the Local Governments shall cause the Title Company to endorse such title policy to delete such exceptions. The Existing Title Exceptions less the Impermissible Encumbrances are referred to as the "**Permitted Encumbrances**." Once the Impermissible Encumbrances have been deleted, the Local Governments' representation and warranty set forth in penultimate sentence of subparagraph (b) above shall be deemed amended to replace the phrase "Existing Title Exceptions" with the phrase "Permitted Encumbrances."

(d) The Local Governments covenant to the Company that upon the Effective Date and independent of the Company or the IDB obtaining title to the Project Site, the Local Governments shall (i) provide immediate access to the Project Site to the Company, its employees, representatives, agents and independent contractors at any time and from time to time, for any purpose the Company deems appropriate, including for the purpose of conducting such studies, inspections and tests as the Company deems desirable, and (ii) on or prior to thirty (30) days after the Effective Date, deliver to the IDB a general warranty deed for the entire Project Site conveying free and clear fee simple title (subject only to the Permitted Encumbrances) to the Project Site, such deed to be in form and substance acceptable to the Company in its sole discretion (the "**Deed**"). The IDB shall immediately thereafter record such deed and provide evidence of such recordation to the Company. The Deed shall be (i) duly executed and in recordable form and (ii) accompanied by the Survey. The Local Governments agree that they shall be responsible for and pay:

(i) to the Title Company all of its fees and premiums attributable to the searches and the issuance of the owner's/leasehold title policy covering the Project Site and improvements to be made and related fixtures in the amount of the Estimated Real Property Value; and

(ii) any real property transfer taxes, deed recording taxes and all other fees, costs, charges or taxes attributable to the transfer by the Local Governments of the Project Site.

(e) Except for the Permitted Encumbrances, the Project Site will be free of any residents, tenants or other users of the land, and the Local Governments acknowledge and agree that the Local Governments are obligated, at their sole cost and expense, to ultimately assure the termination of any right of any third-party to occupy or use any part of the Project Site in accordance with the timeframe set forth in the Project Schedule.

**Section 5.2    Undertakings Regarding the Project.**

(a)    In consideration of the inducements and other commitments made by the Public Authorities in this Agreement, the Company hereby agrees to use its commercially reasonable efforts to employ at least one thousand two hundred forty (1,240) Full-Time Employees (the "*Base Employment Level*") at the Project on or prior to the end of the sixtieth (60th) month after the month in which Start of Production occurs. Within ten (10) days after Start of Production, the Company shall provide notice thereof to the State.

(b)    It is specifically acknowledged and agreed that no incentive, inducement or other benefit granted to the Company under any provision of this Agreement shall be subject to any recapture, clawback, refund or similar remedy, or claim for breach of this Agreement, in the event the Company fails to meet the criteria described in Section 5.2(a) above, and the Public Authorities waive any claims related to any of the foregoing; provided, however, it is further acknowledged and agreed that in the event that the Company fails to meet the criteria of Section 5.2(a) above following the initial five years of the PILOT Agreement, the term of the PILOT Agreement may be reduced pursuant to the terms thereof.

(c)    It is expressly acknowledged and agreed that, notwithstanding any other provision of this Agreement, the Company may terminate this Agreement without further obligation upon written notice to the Public Authorities in the event any of the following occur:

(i)    Failure of the Public Authorities to provide firm commitments satisfactory to the Company in its sole discretion, for the IDB Funds by January 31, 2011;

(ii)   Failure of the Public Authorities to transfer the title to the Project Site to the IDB in accordance with Sections 2.2(a) and 5.1 of this Agreement by January 31, 2011;

(iii)   Failure of the Local Governments, the IDB and the Company to reach agreement on the terms and Conditions of the PILOT Agreement by January 31, 2011; or

(iv)   Failure of the Public Authorities to obtain all necessary approvals required by Section 2.4(b) and otherwise satisfactory to the Company in its sole discretion.

**Section 5.3    Incentive Held Unenforceable.** In the event that any of the incentives, inducements or other assistance to the Company set forth in any portion of this Agreement is held to be invalid, illegal or unenforceable, the Public Authorities shall utilize their respective best efforts to provide the Company with another incentive, inducement or other form of assistance in substitution of such invalid, illegal or unenforceable incentive, inducement or other

assistance. Any such substituted incentive, inducement or other assistance, to the extent permitted by law, shall have a net present value to the Company that is no less than the net present value of the incentive, inducement or other assistance found to be invalid, illegal or unenforceable, calculated at such time, and shall have eligibility criteria which allows the Company to take immediate advantage thereof. Nothing in this Section 5.3 shall be deemed or construed to require any Public Authority to provide or contribute any incentive in an amount greater than the amount of such Public Authority's original obligation under this Agreement.

## **ARTICLE VI MAKING THE PROJECT SITE SUITABLE**

### **Section 6.1    IDB Grants.**

(a)    The State shall provide Five Million Dollars (\$5,000,000) to the IDB, which shall be used to fund the construction of infrastructure items in support of the location of the Project at the Project Site, in each case as requested by the Company. In the event that funds remain after completion of such items, the IDB shall apply such remaining funds toward the cost of any other public-use infrastructure or other items of public benefit as the IDB and the Company mutually deem appropriate for this Project.

(b)    (i)    The State shall provide Ninety Two Million Dollars (\$92,000,000) to the IDB which shall be used for the purposes of (A) acquisition and installation of equipment, (B) design, engineering, site preparation, erection, construction and equipping of the Project Site and improvements thereon (including the acquisition of any materials or goods needed to accomplish any of the foregoing), and (C) infrastructure improvements and development including but not limited to roads, sewer, water, utility infrastructure, and rail infrastructure, in each case in support of the location of the Project at the Project Site and as requested by the Company.

(ii)    In addition, the County and the City shall each utilize their best efforts to provide Twenty Million Dollars (\$20,000,000) each to the IDB, which shall be used for the purposes of (A) infrastructure improvements and development including but not limited to roads, sewer, water, utility infrastructure, rail infrastructure, and related storage facilities in each case in support of the location of the Project at the Project Site, (B) design, engineering, site preparation, erection and construction of the Project Site and improvements thereon (including the acquisition of any materials or goods needed to accomplish any of the foregoing), and (C) such other site development, facilities, improvements and capital expenditures that may be financed consistent with the provisions of Chapter 21 of Title 9, Chapter 16 of Title 13 and Chapter 55 of Title 7 of the Tennessee Code Annotated, including for the purposes of this Section 6.1(b)(ii) any site development, facilities, improvements or capital expenditures where the State is matching funds of the City or the County to subsidize or assist in the development of the Project, expressly including funds provided by the State pursuant to Section 6.1(b)(i) above, which shall be deemed to constitute matching funds.

(c) The funds described in Sections 6.1(a) and 6.1(b) above (the “**IDB Funds**”) will serve the public purpose of promoting economic and community development in the State. All Parties hereby acknowledge and agree that a grant contract or other agreement between the State and IDB to carry out the purposes of this Section 6.1 shall not be assignable to any other entity.

(d) The Company agrees to provide all non-confidential information related to the Project or the Company to the Public Authorities or their respective agents as reasonably necessary for the Public Authorities to issue or apply for bond or other financing for the Project.

(e) The State and the Local Governments shall cause the IDB to, and the IDB shall, contract with suppliers, contractors and vendors (collectively, the “**Vendors**”) as necessary to acquire the goods and materials, and perform the services, described in this Section 6.1. Notwithstanding any other provision of this Agreement, the Company, the IDB and the Public Authorities acknowledge and agree that they shall work cooperatively in good-faith to select all Vendors for the Project, and to determine all terms and conditions related thereto, taking into account the specific needs of the Company and the Public Authorities; provided, however, in the event that the Company and the Public Authorities do not reach unanimous agreement regarding the final selection of a Vendor, or the terms and conditions of the engagement of such Vendor, the Public Authorities shall defer to the direction of the Company regarding the same.

(f) Vendors shall submit a “**Request for Payment**” for work performed, using a form to be approved by the Company and the IDB, to the Company and the IDB for approval. This Request for Payment must be accompanied by supporting documentation which demonstrates to the reasonable satisfaction of the IDB and the Company that the expenditures for which reimbursement is sought were incurred and such other documentation as reasonably deemed necessary by the IDB and the Company to establish that the reimbursement will be for costs incurred for the Project. The IDB shall submit invoices and related documentation in form and substance reasonably acceptable to the State for payment of such costs, and the State and Local Governments shall provide the necessary funds to pay such Requests for Payment via automatic deposit in time to allow for the IDB to make payment to the applicable Vendor within the terms of the relevant contract. The IDB shall pay all Vendors within the terms of the relevant contract. Should the IDB fail to so make such payment, to the fullest extent allowed by law the Public Authorities shall indemnify and hold harmless the Company from any and all liabilities, damages, costs and/or expenses associated therewith. The Public Authorities further covenant and agree that the IDB Funds will be available to pay all Requests for Payment when submitted.

**Section 6.2 Roads.** The Public Authorities covenant to perform, on an ongoing basis, and bear all costs associated with, all maintenance and repairs to all of the public roads on, leading up to and surrounding the Project Site, so as to keep all such roads in compliance at all times with then-prevailing industrial and governmental standards, and to otherwise be maintained at a standard of care comparable with roads utilized for a substantially similar

purpose at other industrial facilities within the County. The Public Authorities covenant to utilize their respective best efforts to assist the Company with obtaining any and all permits, approvals and other assistance necessary for the construction or improvement of any road, as requested by the Company.

**Section 6.3 Railway Lines.** The Public Authorities shall utilize their respective best efforts to assist the Company in its negotiations with CSX, CN or other applicable railroad for (i) an agreement relating to the construction of a turn-out, trackages, switching, signals and similar rail infrastructure, and (ii) an agreement which will provide for rail service for the Company at the Project Site on terms and conditions as favorable to the Company as those offered to other manufacturers with comparable volumes of materials and goods to be transported.

**Section 6.4 Power.**

(a) The Local Governments covenant to the Company that, without cost, liability or expense to the Company, they shall utilize their respective best efforts to cause Memphis Light, Gas and Water ("**MLGW**") or other applicable entity to: (i) complete any energy supply improvements (collectively the "**Energy Improvements**") in respect of the Project Site in accordance with the requirements of the Project as determined by the Company, including, where applicable, extension of electrical transmission lines and/or natural gas pipelines, each with a point of delivery to a destination specified by the Company, sufficient to meet the needs of the Project as determined by the Company, (ii) contract with or cause to be contracted with all contractors to implement the Energy Improvements, (iii) cause, in each instance, the Energy Improvements to be placed in such routes and run to such locations within the Project Site as reasonably necessary for Company to operate the Project, (iv) cause the abandonment or relocation of any electrical transmission lines or natural gas pipelines as reasonably necessary for Company to operate the Project and (v) complete the Energy Improvements on a timely basis in accordance with the Project Schedule. Attached hereto as Exhibit 6.4(a) is the commitment letter dated December 10, 2010 from the MLGW regarding its commitment to perform the duties and obligations stated in this Section 6.4.

(b) The Local Governments covenant to the Company that, without cost, liability or expense to the Company, they shall utilize their respective best efforts to cause MLGW to (i) perform on an ongoing basis, and bear all costs associated with, all maintenance and repairs to all Energy Improvements, so as to keep the Energy Improvements in compliance at all times at then-prevailing industrial and governmental standards, or as otherwise set forth in the Power Specifications, and (iii) maintain all power infrastructure servicing the Project Site at a standard of care which will permit energy services to be provided to the Project Site and Project for the intended purposes described herein.

(c) The Local Governments covenant to the Company that they (i) shall refrain, and shall utilize their respective best efforts to cause applicable utilities to refrain, from discriminating against the Company with respect to energy fees or charges or rates

or surcharges based upon the amount of its investment relating to the energy requirements for the Project and/or the Project Site and (ii) will not recoup, or allow any applicable utilities to recoup, by increased rate charges for energy to be provided to the Company, any such construction and related infrastructure improvement costs and (iii) will make, or cause the applicable utility to make, rates available to the Company which reflect the lowest contractually negotiated or published rates for service requirements similar to those of the Project.

(d) In addition, the Public Authorities shall utilize their respective best efforts to cause the Tennessee Valley Authority (the “TVA”) and MLGW to provide to the Company certain incentives for which the Company may become eligible. This shall include the payment to the Company by the TVA of up to One Million Five Hundred Thousand Dollars (\$1,500,000) for electrical infrastructure improvement expenditures made by the Company for the Project. Such amounts shall be paid by the TVA to the Company within thirty (30) days following submission by the Company of reimbursement requests for electrical infrastructure improvement expenditures incurred by the Company related to the Project. Further, the Public Authorities shall utilize their respective best efforts cause the TVA and/or MLGW to provide all other available incentives subject to the Company’s qualification therefor, including but not limited to the Valley Investment Initiative, the Economic Development Loan Fund, the Valley Advantage Program, and any other incentives provided by the TVA and/or MLGW for which the Company is or becomes eligible. Attached hereto as Exhibit 6.4(d) is the commitment letter dated October 14, 2010 from the TVA to Commissioner Matt Kisber of the Tennessee Department of Economic and Community Development (provided to the Company by the Public Authorities), outlining each such incentive and the expected level of benefit to be granted to the Company pursuant thereto.

**Section 6.5 Law Enforcement and Fire Protection.** The Local Governments covenant to the Company that at all times the Project Site and Project shall receive such law enforcement and fire protection services at levels which are at least comparable to those presently in place at or in proximity to the Project Site.

**Section 6.6 Telecommunications.** The Local Governments shall, without cost, liability or expense to the Company, use their respective best efforts to coordinate and cooperate with the Company in its negotiations with a telecommunications provider for the provision of telecommunications and information technology infrastructure and services to mutually agreeable points of service at the Project and Project Site.

**Section 6.7 Zoning.** The Local Governments represent and warrant to the Company that the real property constituting the Project Site and lying entirely within the City’s jurisdictional boundaries is zoned “Agricultural/Heavy Industrial”, which the Local Governments acknowledge and agree are suitable zoning restrictions for the Project, and there are no conditions, restrictions, ordinance or similar provisions imposed by the Local Governments that are presently in force which would adversely affect the intended uses of the Project Site as contemplated herein. The Local Governments covenant to the Company that they will (i) inform the Company, in writing, promptly upon learning of any pending, proposed or

threatened zoning, rezoning or environmental permitting activities within its jurisdictional control which could lead to a classification that would interfere with the operations of the Project as contemplated herein and (ii) cooperate with the Company to eliminate or ameliorate any adverse impact to the Company, to the fullest extent permitted by law. The Local Governments shall utilize their respective best efforts to assist the Company in receiving a variance or other exception to the zoning of the Project Site as necessary to accommodate the construction of any structures on the Project Site which would otherwise exceed any restrictions set forth in the applicable zoning ordinances.

**Section 6.8 Operating Times.** The Public Authorities represent, warrant and covenant that (i) there is no law, rule, or regulation of the State or Local Governments governing noise levels and/or time of operation which would preclude or restrict both construction works and future operations at the Project Site on a twenty-four (24) hour / seven (7) days a week basis and (ii) there are no impact or development fees chargeable to or payable by the Company in establishing or constructing the Project at the Project Site.

**Section 6.9 Interference.** The State agrees to use its best efforts to exercise police and other powers to oppose the location of any facility in or near the Project Site that (i) would threaten damage to the Company's products, people, property, equipment or manufacturing process; or (ii) would result in air emissions or water effluent that could adversely affect the Company's ability to operate, require more restrictive emissions or effluent limitations, cause increased costs or require additional investment. The State agrees that it will, acting alone or jointly with the Company, contest the granting of Permits by appropriate State and local agencies to any such above-described facility. Notwithstanding any provision in this Section 6.9, the State will not be obligated to take any action under this Section 6.9 which would cause the State to violate State and federal law.

**Section 6.10 Existing Infrastructure.** The Local Governments hereby represent and warrant to the Company that the existing infrastructure at the Park is accurately and completely represented and described as shown on EXHIBIT 6.10 attached hereto.

## ARTICLE VII TRAINING

**Section 7.1 Job Training Assistance.** The State, through the Department of Economic & Community Development, and in accordance with the FastTrack Job Training Assistance Program as well as the requirements and standards of the Company, commits a minimum of Three Million One Hundred Thousand Dollars (\$3,100,000.00) (based upon one thousand two hundred forty (1,240) Production Positions at Two Thousand Five Hundred Dollars (\$2,500) per Production Position) to the Company. In the event there are more than one thousand two hundred forty (1,240) Production Positions created, each additional Production Position shall qualify for to Two Thousand Five Hundred Dollars (\$2,500) per Production Position. All funds under this Section 7.1 shall be applied toward Qualified Training Costs incurred by the Company in connection with training related to the Project.

**Section 7.2 On-the-Job Training.** The State, through the Department of Labor and Workforce Development, hereby agrees to provide on-the-job training, as directed and organized by the Company, for qualified workers in an amount up to fifty percent (50%) of such qualified workers' wages and agrees to commit a minimum of One Hundred Fifty Thousand Dollars (\$150,000) to the Company for on-the-job training. The Department of Labor and Workforce Development will contract with the local workforce investment area to administer the grant dollars which are based on cost reimbursement principles targeting the Company's new hires. As the Company incurs expenses, it will file for reimbursement to the Workforce Investment Network.

**Section 7.3 Employee Recruitment and Screening.** The State, through the Department of Labor and Workforce Development and in conjunction with Tennessee Career Centers, hereby agrees to provide Applicant Recruitment and Screening Services in cooperation with the Company. Applicant Recruitment and Screening Services for the Project have a value, through cost mitigation, in excess of Eight Hundred Fifty Thousand Dollars (\$850,000).

## **ARTICLE VIII ADDITIONAL COMMITMENTS OF THE PUBLIC AUTHORITIES**

**Section 8.1 No Arbitrary, Capricious and Punitive Actions.** The State and Local Governments covenant to the Company that they will not take regulatory or fiscal action nor impose any State or local Tax, license fee, duty or other type of financial imposition or Liability against the Company which would constitute an arbitrary, capricious, or punitive action against the Company, including the imposition of any such regulation, State or local Tax, fee, duty or Liability that by its nature would apply primarily to the Company or its employees to the exclusion of most other businesses and taxpayers within the jurisdiction of the State or Local Governments.

**Section 8.2 Vendors.** The State recognizes and acknowledges that (i) the Company may enter into agreements with Vendors to provide the Company with local-content products and services, and (ii) certain of such Vendors may construct facilities upon parcels of land on and in reasonable proximity to the Project Site for the purpose of providing such products and services. To the extent a Vendor qualifies under the applicable Tax and other laws, rules and regulations of the State, the State, Agencies and Local Governments will negotiate in good-faith with each Vendor the availability of:

- (a) credits for capital investments against State franchise and/or excise Tax;
- (b) applicable Tax abatements;
- (c) statutory Tax-based and fiscal incentives; and
- (d) eligibility to apply to receive an industrial development grant through any applicable Public Authorities, in the maximum amount permitted by law, based upon the



Vendor's industrial development, to be utilized by such Vendor to defray costs of site preparation work in connection with such Vendor's facilities.

It is expressly acknowledged by the Public Authorities, that (i) the benefits to the Vendors as set forth herein are separate and distinct from the inducements otherwise intended to be made available to the Company in accordance with this Agreement and (ii) no such benefits granted to or made available to any such Vendors will in any manner preclude, diminish or adversely impact in any manner upon the inducements and the value thereof intended to be made available to the Company pursuant to this Agreement.

**Section 8.3 Location Restrictions.** To the fullest extent allowed by law, the Local Governments hereby agree that, during the term of this Agreement, they will not allow any person or entity (other than as expressly agreed in writing by the Company) to locate within the Park any facility which is or may reasonably be expected to become involved in the manufacture and/or distribution of household or industrial appliances.

**Section 8.4 Reimbursement for Loss of Business.** The Local Governments hereby agree to pay to the IDB for the benefit of the Company the sum of Twenty-Five Thousand Dollars (\$25,000) per Business Day lost as a result of construction delays in the Project Schedule caused by any Local Government or authorities, agencies, departments or other entities within such Local Government's control (up to a maximum of One Hundred Twenty Five Thousand Dollars (\$125,000) in the aggregate), and the IDB shall use such funds for the purpose of defraying Project costs and expenses incurred as a result of such delay and as directed by the Company.

**Section 8.5 Foreign-Trade Zone Designation.** Upon the request of the Company, the Public Authorities hereby covenant and agree to designate and/or activate the Project Site, or a portion thereof as designated by the Company, as a Foreign-Trade Zone and/or Sub-Zone with all benefits associated therewith, and shall cooperate and coordinate with the Company in arranging for such activation as soon as practicable after the Effective Date. The Public Authorities hereby represent and warrant that there are no fees or expenses to the Company associated with such activation, and further covenant that to the extent any fees or expenses are imposed in the future related to status as a Foreign-Trade Zone and/or Sub-Zone, such fees and expenses shall be waived or reimbursed to the Company.

## ARTICLE IX GOODWILL AND COMMUNITY INVOLVEMENT

**Section 9.1 Temporary Office Space.** The Parties understand the importance of, and wish to promote, the provision of a positive and conducive work environment during work at the Project Site and start-up of the Project. Accordingly, the Local Governments commits to provide to the Company, at no cost to the Company, a ten thousand (10,000) square foot office space reasonably acceptable to the Company, with a minimum of fifty (50) parking spaces available to the Company. The County hereby agrees to provide such office space to the Company from the

January 1, 2011 until December 31, 2011. If so requested by the Company, the Public Authorities shall use their respective best efforts to extend the Company's occupancy.

## **ARTICLE X ENVIRONMENTAL AND PERMITTING MATTERS**

**Section 10.1 Wetlands.** The Public Authorities shall reimburse the Company for all costs associated with any wetlands delineation on the Project Site and thereafter shall undertake at their own expense any and all related wetlands mitigation required by the U.S. Army Corps of Engineers or other governmental authority.

**Section 10.2 Permits.**

(a) The Public Authorities covenant and agree to use their respective best efforts to assist the Company in obtaining any and all permits necessary for the construction, operation, maintenance of the Project (whether environmental or otherwise)(collectively the "***Permits***") so that the Permits will be obtained or issued in a timely manner so as not to adversely affect the Project Schedule or the subsequent operation of the Project, including any and all Permits required for: (i) land disturbance, (ii) tree removal and reforestation, (iii) the obstruction, relocation, alternation, or rerouting of aquatic resources, whether local, State, or federal, (iv) the withdrawal of surface water, (v) the taking, disturbance, destruction, and/or mitigation of Historic Properties and Protected Species, (vi) the management or discharge of wastewater or storm water during both construction and operation of the Project, (vii) the Company's desired utilization of the Project Site without unacceptable (in the Company's sole discretion) limitations on such utilization previously imposed by judicial or administrative orders pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, the federal Resource Conservation Recovery Act, their State counterparts, any relevant Department of Defense or Department of the Army programs (to include the Installation Restoration Program), and/or their implementing regulations in association with the Project Site, (viii) the management, transportation, disposal and/or remediation of solid waste, hazardous waste, and Hazardous Material, (ix) the dredging and/or filling of waters of the United States, (x) compliance with section 401 of the Clean Water Act (water quality certification) and (xi) notwithstanding Section 12.4 below, the construction and/or operation of any air emissions source(s) associated with the Project and its operation.

(b) The permitting assistance obligations set forth in Section 3.2 of this Agreement shall likewise apply to the permits referenced, expressly or generally, in Section 10.2(a) above.

**Section 10.3 Environmental Site Assessments, Remedial Activities and Related Assurances.**

(a) The Public Authorities shall, with respect to the Project Site and without cost, liability or expense to the Company, cause the preparation and submission to the relevant authorities of any assessments, reports, or analyses (collectively, "***Assessments***") regarding the environmental condition of the Project Site and/or impacts to the environment, including Protected Species, the human environment, and other natural resources and Historic Properties which may be required for the planned development of the Project Site as contemplated in this Agreement, pursuant to any federal, State or local law as a condition to the development of the Project Site, or as may be required by the Company. Assessments may include, but are not necessarily limited to, environmental site assessments, environmental assessments, environmental impact statements, and cultural resource assessments.

(b) With respect to the Assessments, each shall specifically provide by its terms that such Assessment is for the benefit of the Company and contain an acknowledgment from the company performing the work that the Company as well as any and all lenders, if any, with respect to the Project shall be entitled to rely upon the results of such Assessments. To the extent that any Assessments have already been completed in association with the Project, the Public Authorities shall cause such acknowledgments to be executed with respect to such existing Assessments. Furthermore, the Company will be allowed to review and approve all companies providing any Assessment, shall have the right of prior approval of any engagement agreements proposed with such companies, and shall have the right to review and comment upon any final drafts of such Assessments prior to their submission to third parties, including federal, State, and local regulatory agencies, or the public. Such reports or analyses may be in addition to the Assessments conducted to date and or as otherwise identified in Sections 10.3(c) and 10.3(d) below.

(c) The Public Authorities shall reimburse the Company for the cost of a Phase I Environmental Site Assessment to be prepared by Pickering Environmental Consultants, Inc., or other environmental consultant designated by Company, which complies in all respects with ASTM 1527 05, 40 CFR Part 312 and any equivalent State statutory or regulatory requirements for the assertion of applicable defenses to liability, such as the "innocent purchaser defense," "bona fide prospective purchaser defense," and/or "contiguous property owner defense" as those terms are used under the Comprehensive Environmental Response, Compensation, and Liability Act.

(d) The Public Authorities shall reimburse the Company for the cost of a Phase II Environmental Assessment, or groundwater and soil sampling and testing, which is deemed appropriate by the Company.

(e) The Public Authorities further agree that, should the Company, in its sole discretion, determine that further investigation, mitigation, corrective action, or remediation of Hazardous Materials, Protected Species, Historic Properties, or other

conditions at the Project Site is required for the construction, modification, expansion, and/or operation of the Project, then the Public Authorities at their sole cost and expense shall, consistent with the timing set forth in the Project Schedule, cause such investigation, corrective action and/or remediation work to be undertaken as may be necessary to permit the development of the Project Site as contemplated herein without additional costs or delays or the use of institutional controls unacceptable to the Company.

(f) The Company may, in lieu of or in connection with requiring certain investigation, corrective action, mitigation or remediation to occur, opt to receive formal and legally binding assurances from the Public Authorities that no regulatory action will be pursued against the Company related to the presence of such Hazardous Materials, Protected Species, Historic Properties, or other conditions on the Project Site. If the Company opts to rely, in whole or in part, on such assurances, then the Public Authorities shall use their respective best efforts to expeditiously provide such assurances prior to the IDB acquiring either legal title to the Project Site. To the extent that the Company desires similar assurances from federal agencies, then the Public Authorities agree to seek and utilize their respective best efforts to obtain such assurances from such agencies prior to the IDB acquiring legal title to the Project Site.

(g) To the extent permitted by law, all of the Assessments shall be treated as confidential information of the Company except as may be required to effect the purposes and intentions of the Agreement.

**Section 10.4 Environmental Offsets.** In the event emissions "offsets" are required in order to obtain authorization under any applicable law, rule or regulation of any federal, State or local governmental authority, to construct or operate or continue to operate the Project and any modification or expansion thereof, the Public Authorities will utilize their respective best efforts to create, maintain and defend a system to facilitate the creation, banking, trading and utilization of such offsets. In addition, the Local Governments will utilize their respective best efforts to provide to the Company, free of charge, any such offsets as may be required for the construction, operation or continued operation of the Project and any modification or expansion thereof, or in the alternative, the Local Governments will reimburse the Company for all costs incurred by the Company to create, maintain and defend such a system and to obtain such offsets by whatever means deemed appropriate by the Company.

**Section 10.5 Environmental Indemnification.**

(a) To the fullest extent permitted by applicable law, the Public Authorities hereby agree, jointly and severally, to release, indemnify, reimburse, hold harmless and defend the Company from and against any and all:

(i) Environmental Conditions arising out of or in any way related to events, occurrences or circumstances prior to and including the Effective Date, irrespective of the date of discovery;

(ii) Environmental Claims; or

(iii) losses, damages, fines, penalties, remedial costs, legal expenses (including the payment of expert and attorneys' fees and expenses, and including such costs, fees, and expenses should the Company choose, in its sole discretion, to intervene in a legal action related to any Permit, Environmental Claims, or Environmental Conditions related to the Project or the Project Site), other related costs associated therewith, or any liabilities of any nature whatsoever, whether to person, property or natural resources, which the Company may incur that arise out of or in any way relate to the Project Site, Hazardous Materials, or the violation of any Environmental Laws, and that arise out of or are in any way related to events, occurrences or circumstances prior to and including the Effective Date, irrespective of the date of discovery.

(b) This environmental indemnity shall survive indefinitely (including surviving the termination of this Agreement).

(c) To the extent that the Public Authorities are, jointly or singularly, indemnified by previous owners or operators of the Project Site for the events listed in Section 10.5(a)(i) through (iii) above, the Public Authorities shall advise the Company accordingly and, upon the Company's request, shall utilize their respective best efforts to cause such indemnification to be transferred to the Company and to otherwise accrue to the Company's benefit. However, the transfer of such indemnification by the Public Authorities to the Company shall not relieve the Public Authorities of their own indemnity responsibilities set forth in this section.

**Section 10.6 Historic Properties and Protected Species.** The Public Authorities hereby agree to conduct appropriate assessments and consultations to determine whether the Project Site or surrounding areas contain Historic Properties or Protected Species and whether the presence of such Historic Properties or Protected Species may affect the use of the Project Site for construction and operation of the Project. If requested by the Company the Public Authorities covenant to address those potential effects to the satisfaction of, and without cost, liability or expense to, the Company and in a timely manner so as to not adversely affect the Project Schedule.

## **ARTICLE XI TERMS AND CONDITIONS**

**Section 11.1 Certain Representations and Warranties.** Subject to approvals of the respective governing bodies of the Public Authorities pursuant to Section 2.4:

(a) Each Public Authority separately represents and warrants to the Company that it has the legal power and authority to enter into this Agreement, and any Ancillary Agreement, to which it is or will become a party, and to make the respective commitments made herein or therein, and to the extent that any Public Authority requires

the authorization, approval or consent of any other Public Authority, or any third-party for it to have made the commitments contained herein, or any Ancillary Agreement to which it is or will become a party, that such authorizations, approvals and consents have been duly obtained in accordance with applicable laws, rules, regulations and procedures.

(b) Each Public Authority separately represents and warrants to the Company that (i) the execution and delivery by it of this Agreement, and any Ancillary Agreements to which it is or will become a party, the performance by it of its obligations hereunder or thereunder, and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions on the part of it and (ii) this Agreement, and any Ancillary Agreement to which it is or will become a party, constitutes a legal, valid and binding obligation of such Public Authority, enforceable against it in accordance with its terms.

**Section 11.2 Specific Performance.** Each of the Public Authorities acknowledges and agrees that the Company would be damaged irreparably in the event that any of the provisions of this Agreement (and any Ancillary Agreement) are not performed by any of the Public Authorities in accordance with their specific terms or otherwise are breached. Accordingly, each of the Public Authorities agrees that the Company shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and any Ancillary Agreement and, to the extent permitted by law, to enforce specifically this Agreement and any Ancillary Agreements and any of the terms and provisions hereof or thereof applicable to it in any action instituted in any court having jurisdiction over the affected Public Authorities and the matter, in addition to any other remedy to which the Company may be entitled, at law or in equity. Prior to filing an action for injunctive relief, the Company must give written notice of any claimed breach which provides the applicable Public Authority with a thirty (30)-day period to remedy the breach. The Public Authorities acknowledge and agree that if the Company institutes any action or proceeding to enforce any provision hereof or in any Ancillary Agreement, such Party or Parties against whom such action or proceeding may be lawfully brought hereby waives the claim or defense that the Company has or will have an adequate remedy at law for money damages. Further, each Public Authority is responsible only for its obligations assumed hereunder and is not responsible for the obligations of any other Public Authority.

**Section 11.3 Retention of Contractors and Vendors.** The Company is aware that the Public Authorities are committed to promoting full opportunity to women and minorities in their employment and procurement decisions. It is the intention of the Company to conduct its activities in a manner that is consistent with the promotion of diversity, and to work in good-faith with the City of Memphis Minority Business Development and Oversight Commission to assist with the promotion of such goals.

**Section 11.4 Time is of the Essence.** The Public Authorities and the Company acknowledge and agree that (i) any delay in the completion of the Project and occupancy thereof by the Company may cost the Company and/or the Public Authorities substantial amounts of money and, therefore, time is of the essence as to all terms and conditions set forth herein, and (ii) they will use their respective best efforts in their attempt to have the matters contemplated herein proceed on the basis of the time schedule dictated by the terms of this Agreement and by

the Project Schedule, provided, however, that the Parties acknowledge that, subject to the terms of this Agreement, the Project Schedule is subject to change from time to time by the Company in accordance with its business requirements, and any such change which requires an extension of time within the Project Schedule shall not be considered a determination not to proceed with the matters contemplated herein for the purposes of this Section 11.4.

**Section 11.5 Change in Law.** Each Public Authority acknowledges that as of the Effective Date the Company is and later may become eligible for certain statutory and negotiated tax incentives, including but not limited to those described herein. Each of the Public Authorities covenants to the Company that in the event of any change in law, the result of which would be to lessen to, or remove from, the Company the economic benefit of any such tax incentive or any other incentive or inducement of whatever nature identified in this Agreement which would have been available during such period under the law in effect on the Effective Date, including any economic benefit negatively affected by application of the holdings and decision in the Cuno Case (or other directly comparable case), within the State, the Public Authorities shall exercise their respective best efforts to provide the Company with an exemption from the law as so changed. In the event an exemption from the law as so changed is not achieved within a reasonable time period under the particular circumstance, then to the extent that a Public Authority has been responsible for such change in law (or in the case of a Cuno Case situation, affected thereby) that Public Authority shall utilize their respective best efforts to provide the Company with another incentive having equivalent economic value (and which shall have eligibility criteria which allows the Company to take immediate advantage thereof) and/or effect to the statutory or other incentive or inducement so lessened or removed from that Public Authority's obligation to the Company hereunder.

**Section 11.6 Capital Contributions.** The Company intends to treat the benefits granted by the Public Authorities related to the Project Site pursuant to this Agreement (the "**Project Benefits**") as a non-shareholder contribution to the Company's capital under Section 118 of the I.R.C. of 1986, as amended, made as a material inducement to the Company to locate the Project in the State, and otherwise as benefits that (a) are not compensation to the Company for specific quantifiable goods or services provided to the Public Authorities by the Company, (b) will become a permanent part of the Company's working capital structure, (c) will result in a benefit to the Company commensurate with its value, (d) will be used by the Company or will contribute to the production of additional income, and (e) have been bargained for by the Company and the Public Authorities. The Public Authorities shall not challenge or object to such characterization, but if the Project Benefits are not so characterized, the terms of this Agreement shall not be affected hereby.

## ARTICLE XII MISCELLANEOUS

**Section 12.1 Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue in effect through December 31, 2099.

**Section 12.2 Governing Law; Jurisdiction and Venue.** The governing law of this Agreement shall be the law of the State of Tennessee, without regard to any conflicts of law principles. The Parties agree that no suit or action shall be commenced by any Party hereto, or by any successor, personal representative or assignee of any of them, with respect to the Project, or with respect to this Agreement or any other document or instrument which now or hereafter evidences all or any part of the actions contemplated herein, other than in a State court of competent jurisdiction in Tennessee and for the County of Shelby, Tennessee or in the courts of the United States District Court for the Western District of Tennessee, and all Parties hereby consent and submit to the jurisdiction of such courts.

**Section 12.3 Severability.** In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their respective best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

**Section 12.4 Notices.** Any notice, request, demand, claim, or other communication hereunder shall be in writing and shall be deemed duly given or made (a) when personally delivered to the intended recipient (or an officer or authorized representative of the intended recipient), (b) six (6) days after it is sent by certified first class mail, return receipt requested, postage prepaid, (c) three (3) days after it is sent by recognized overnight courier service, or (d) when sent by facsimile service (with such facsimile to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), to the following addresses and recipients:

STATE:

Governor's Office  
Tennessee State Capitol  
Nashville, Tennessee 37243-0001  
Telephone: 615-741-2001  
Facsimile: 615-532-9711  
Attention: Honorable Phil Bredesen

With copy to:

Department of Economic and Community  
Development  
312 Rosa L. Parks Avenue, 11th Floor  
Nashville, TN 37243  
Telephone: 615-253-2006  
Facsimile: 615-770-7418  
Attention: General Counsel



CITY: City of Memphis  
125 North Main Street  
Memphis, TN 38103  
Telephone: 901-576-6500  
Facsimile: 901-576-6200  
Attention: George Little, CAO, City of Memphis

COUNTY: Shelby County  
160 N. Main, Suite 660  
Memphis, TN 38103  
Telephone: 901-545-4500  
Facsimile: 901-545-4759  
Attention: Jim Huntzicker, Shelby County Finance  
Director

IDB: The Industrial Development Board of the City of  
Memphis and Shelby County, Tennessee  
125 North Main Street  
Memphis, TN 38103  
Telephone: 901-576-6500  
Facsimile: 901-576-6200  
Attention: Jill Eglehart, Chair

COMPANY: Electrolux Home Products, Inc.  
10200 David Taylor Drive  
Charlotte, NC 28262.  
Telephone: (980)-236-2264  
Facsimile: (706) 228-6646  
Attention: Jacob Burroughs

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section 12.4.

**Section 12.5 Confidentiality.** Each Public Authority understands the importance to itself and the Company of keeping details concerning the transactions contemplated hereby strictly confidential. Accordingly, each Public Authority acknowledges that, subject to all applicable laws which require disclosure of public records, all confidential, proprietary and trade secret information of the Company which has been delivered or otherwise made available to the Public Authorities, including the terms of this Agreement, is subject to the Confidentiality Agreements and may not otherwise be disclosed to any third-party except in accordance with such respective agreement or as mandated by applicable law. Subject to applicable law, each Public Authority hereby agrees to redact any information in this Agreement which the Company deems, in its sole and absolute discretion, proprietary. The State hereby agrees that it will not publish any of the Letter Rulings issued in connection with this Agreement.

**Section 12.6 Press Releases.** Each of the Public Authorities agrees to cooperate fully to coordinate with the Company in connection with all press releases and public disclosures

concerning the transactions contemplated by this Agreement. The Public Authorities agree that the State shall have sole responsibility in coordinating with the Company in this regard, provided, however, that the initial press release announcing the Project contemplated herein shall also be coordinated with the Local Governments. No press releases or other public disclosure relating to the transactions contemplated by this Agreement will be issued by any Public Authority without the prior written approval of the Company. The Company shall be free to issue or file with all applicable regulatory authorities such documents as such entity considers necessary or appropriate, including all filings with the appropriate securities law authorities and stock exchanges.

**Section 12.7 Assignment.**

(a) This Agreement is not assignable by the Public Authorities.

(b) The Company shall have the right to assign this Agreement and all of its rights, interests and obligations created and set forth herein, at any time, to any Affiliate which is a U.S. legal entity, subject to the consent of the Public Authorities, which shall not be unreasonably withheld, conditioned or delayed. Upon any such assignment and assumption thereof by an assignee, the Company shall notify the Public Authorities.

**Section 12.8 Binding Nature.** It is the intention of the Parties that the commitments and obligations set forth herein shall be binding upon the Parties hereto and their respective successors and permitted assigns.

**Section 12.9 Further Assurances.**

(a) In addition to the obligations otherwise expressly provided herein, the Public Authorities agree to use their respective best efforts to do all things and take all actions required after the date hereof (i) to cause the establishment of the Project and (ii) to address the other matters contemplated herein, including the obtaining, execution and delivery of all necessary or desirable signatures, agreements, filings, consents, authorizations, approvals, licenses or deeds.

(b) Although specific commitments to the Company have been made by the respective Public Authorities, in this Agreement and/or the Ancillary Agreements, the State acknowledges that the State has arranged all such commitments and agreements as an entire incentive package designed to induce the Company to locate the Project within the State and, without limiting the liability of such Public Authorities pursuant to their respective commitments to and/or agreements with the Company, the State is prepared and is willing and agrees to oversee the due performance by each Public Authority of each and every commitment or agreement made by them to or with the Company. The State reserves the right to direct that its obligations hereunder be performed by public authorities other than those Public Authorities designated hereunder, fully accepting that the State retains full responsibility for all of its obligations set out hereunder; provided, however, that the State shall provide advance written notice to the Company of any change in such designations in accordance with Section 12.4 hereof. Accordingly, the

State shall either (i) cause another agency of the government of the State or non-agency party to provide due performance of such obligations on a timely basis or (ii) provide due performance of such obligations.

(c) As an additional assurance, in the event of a Public Authority's "nonperformance," the State agrees to promptly provide performance of the obligation. A nonperformance shall occur upon a Public Authority's failure to satisfy any of its commitments or obligations, financial or otherwise, contained in this Agreement within the time frame provided for such commitment or obligation.

(d) Notwithstanding anything in this Agreement to the contrary, no recourse shall be had for the payment of the obligations of the Local Governments against the ad valorem tax funds of the Local Governments, nor is the full faith and credit or taxing power of the Local Governments pledged to the payment of any obligation hereunder. The obligations of the Local Governments hereunder shall be paid solely from legally available non-ad valorem revenues, unless and to the extent such obligations relate to governmentally owned infrastructure that is to be financed by bonds issued by any of the Local Governments in accordance with Chapter 21 of Title 9 of the Code.

(e) To the extent permitted by law, no recourse shall be had against, and no personal liability shall attach to, any director, officer, agent, attorney or employee of the Public Authorities (or successor thereto) in his/her individual capacity, past, present or future, either directly or through such Public Authority or any successor entity, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, in any way related to the enforcement of any obligation, promise or agreement of the Public Authorities contained herein.

**Section 12.10 No Third-Party Beneficiaries.** Other than as set forth in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

**Section 12.11 Article and Section Titles and Headings.** The article and section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

**Section 12.12 Incorporation of Exhibits, Annexes, and Schedules.** The exhibits, annexes, and schedules identified in this Agreement and annexed hereto are incorporated herein by reference and made a part hereof. If any provision of this Agreement conflicts with or is inconsistent with any Ancillary Agreement relating to the matters contemplated hereby or with any exhibit, annex or schedule annexed hereto, the terms, conditions and obligations set forth in this Agreement shall control.

**Section 12.13 Amendments and Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and duly signed by an authorized representative of each of the Parties. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless set

forth in a writing executed by the party granting such waiver, nor shall it be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**Section 12.14 Construction.** In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; references to "writing" includes printing, typing, lithography, facsimile reproduction and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits, schedules and appendices attached thereto and all subsequent amendments and other modifications to such instrument; references to days shall mean calendar days unless otherwise specified; and references to Parties include their respective successors and permitted assigns.

**Section 12.15 Force Majeure.** In the event of any Party hereto being rendered unable, wholly or in part, by reason of Force Majeure to carry out its obligations hereunder (other than the obligation to make payment of amounts due hereunder), or to meet the requirements to earn a payment or other commitment of another Party hereto, the obligations of the disabled party suffering such Force Majeure event shall be suspended during the continuance of any inability so caused; provided, however, that such Party suffering the Force Majeure event shall (i) deliver prompt notice to the Party to whom the obligations are due of the occurrence of such a Force Majeure event (such notice to describe the circumstances creating the event and the steps that such party proposes to take to eliminate the event or the effects thereof), (ii) use its best efforts to eliminate such event or the effects thereof and shall deliver periodic status reports regarding such efforts to the Party to whom the obligations are due, (iii) promptly deliver notice to the Party to whom the obligations are due when such event has been eliminated or has ceased to prevent the performance of the suffering Party's obligations and (iv) proceed to fulfill or perform such obligations as soon as reasonably practical after the event has been eliminated or has ceased to prevent the performance of the suffering Party's obligations.

**Section 12.16 Survival of Representations and Warranties.** The covenants, representations and warranties made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such covenants, representations and warranties relate.

**Section 12.17 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Electronic facsimile signatures shall also be deemed originals for purposes hereof.

**Section 12.18 Entire Agreement.** This Agreement (including any Ancillary Agreements and exhibits referred to herein) constitutes the entire agreement among the Parties

hereto and supersedes any prior understandings, agreements or representations by or among the Parties hereto, whether written or oral to the extent they relate to the subject matter herein.

### **ARTICLE XIII DEFINITIONS**

***“Abatement Period”*** has the meaning set forth in Section 4.2(a) hereof.

***“Administrative Fees”*** has the meaning set forth in Section 3.2(b) hereof.

***“Affiliate”*** means, with respect to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person or entity, and for such purposes, the term “control” (including the terms “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through ownership of voting securities, by contract or otherwise; provided that direct or indirect ownership of equity of an entity carrying more than 50% of the voting rights shall be considered control of that entity, notwithstanding that control in fact may be exercised by another person or entity or group of persons or entities.

***“Agencies”*** has the meaning set forth in the Preamble hereof.

***“Agreed Value”*** has the meaning set forth in Section 4.2(b) hereof.

***“Agreement”*** has the meaning set forth in the Preamble hereof.

***“Ancillary Agreement”*** means each agreement (other than the Agreement) referenced herein or which is incorporated as an exhibit hereto between the Company and one or more of the other Parties hereto.

***“Applicant Recruitment and Screening Services”*** means the State’s provision of applicant recruitment and screening services including (i) all staffing services, (ii) the development and implementation of a training applicant advertising plan (through appropriate media, including newspapers, radio, television and online), (iii) coordination and implementation of training applicant resume collection and pre-screening, (iv) profiling, testing and assessment, (v) coordination and implementation of training applicant interviews, (vi) coordination and implementation of training applicant drug testing, and (vii) monitoring of the Company’s selection process and coordination of pre-employment enrollment procedures.

***“Assessments”*** has the meaning set forth in Section 10.3(a) hereof.

***“ASTM”*** means The American Society for Testing Materials.

***“Base Employment Level”*** has the meaning set forth in Section 5.2(a) hereof.

**“Business Day”** means any day other than a Saturday, Sunday or any day designated as a State or federal holiday.

**“C.F.R.”** means the Code of Federal Regulations.

**“City”** has the meaning set forth in the Preamble to this Agreement.

**“Code”** means the Tennessee Code Annotated, as amended.

**“Company”** has the meaning set forth in the Preamble hereto and includes its successors, permitted assigns and Affiliates.

**“Confidentiality Agreements”** shall mean the Confidentiality Agreement dated September 30, 2010 between Company and the Tennessee Department of Revenue, the Confidentiality Agreement between Company and the Tennessee Department of Economic and Community Development dated October 1, 2010, and the Confidentiality Agreement between Company and the Memphis Regional Chamber of Commerce dated September 30, 2010.

**“Coordinators”** has the meaning set forth in Section 3.1 hereof.

**“County”** has the meaning set forth in the Preamble hereto.

**“Cuno Case”** means DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 (2006).

**“Deed”** has the meaning set forth in Section 5.1(d) hereof.

**“Distribution Site”** has the meaning set forth in Section 2.1 hereof.

**“Effective Date”** has the meaning set forth in the Preamble hereto.

**“Energy Improvements”** has the meaning set forth in Section 6.4(a) hereof.

**“Environmental Claims”** means any and all claims of every nature and character in law, equity, tort, or otherwise, including claims for natural resource damages, remedial costs, demands, enforcement actions, lawsuits, citizen suits, violations and injunctive relief, for losses, costs, penalties, fines, damages, Liabilities, expenses (including reasonable attorneys’ fees, expert fees and litigation expenses), expenditures, and awards asserted under any Environmental Laws or common law, legal, equitable or other theories (including nuisance, trespass, fraud, negligence, strict liability, and suits involving abnormally dangerous activities), which are in any way related to Environmental Conditions or Hazardous Materials at, to, from or onto the Project Site, that arise out of or are in any way related to events, occurrences or circumstances prior to and including the Effective Date, irrespective of the date of discovery. The term “Environmental Claims” shall be interpreted in the broadest sense possible.

**“Environmental Conditions”** means any condition, activity, or operation of the Project Site, including soil, sediment, groundwater, surface water, or any buildings, fixtures, pipes,

and/or other improvements, which is or may be regulated, controlled, limited or prohibited pursuant to any federal, State, or local Environmental Laws, including Hazardous Materials at, to, from or onto the Project Site, or any conditions identified or referenced in the Phase I Environmental Site Assessment, any Phase II Environmental Site Assessment, or any related or subsequent environmental reports or Assessments. The term "Environmental Conditions" shall be interpreted in the broadest sense possible.

***"Environmental Coordinator"*** means, with respect to the Project Site, the specific individual designated and paid by the applicable Public Authority to coordinate with and advise the Company with respect to the preparation and obtaining of all environmental Permits that may from time to time be required by the Company for the purpose of facilitating the environmental Permit process on an expedited basis and in accordance with all applicable law.

***"Environmental Laws"*** means any federal, State, or local law, statute, ordinance, and regulation, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative order, consent decree, or judgment applicable to the Project Site relating to the regulation or protection of human health, safety and/or the environment, natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species, and/or vegetation), as well as protected sites or artifacts of historical or cultural significance. By way of further example, and without limiting the breadth of the foregoing, "Environmental Laws" include, but are not limited to, the National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321 et seq.); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.); the federal Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.) ("CERCLA"); the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.); the Toxic Substance Control Act, as amended (15 U.S.C. §§ 2601 et seq.); the Clean Water Act; the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.); the Federal Coastal Zone Management Act, as amended (16 U.S.C. §§ 1451 et seq.); the Occupational Safety and Health Act, as amended (29 U.S.C. §§ 651 et seq.); the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300(f) et seq.), the Tennessee Hazardous Waste Management Act; the Tennessee Solid Waste Disposal Act; the Tennessee Air Pollution Control Act; the Tennessee Water Quality Control Act; and any and all regulations promulgated thereunder and all similar State and local laws, statutes, ordinances, regulations, judicial or administrative orders, consent decrees, or judgments.

***"Estimated Real Property Value"*** has the meaning set forth in Section 5.1(b) hereof.

***"Existing Title Exceptions"*** has the meaning set forth in Section 5.1(b) hereof.

***"Force Majeure"*** means acts of God; strikes, lockouts, or other industrial disturbances; hereof, conditions arising from a change in governmental laws, orders, rules or regulations; acts of public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; hurricanes; floods; washouts; arrests and restraints of governments and people; civil disturbances; and any other causes, whether of the kind herein enumerated or

otherwise, not within the control of the party claiming suspension, and which by the exercise of due diligence, such party is or would have been unable to prevent or overcome. Such term shall likewise include, in those instances where a party is required to obtain or furnish materials and supplies for the purpose of constructing or maintaining facilities for such purpose, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable costs, and after the exercise of reasonable diligence, such materials and supplies.

***“Foreign-Trade Zone and/or Sub-Zone”*** means zones for specialized purposes or sub-zones in areas separate from existing foreign trade zones for one or more of the specialized purposes of storing, manipulating, manufacturing, or exhibiting goods when the Board of the Foreign-Trade Zone finds that existing or authorized zones will not serve adequately the convenience of commerce with respect to the proposed purposes. See 15 C.F.R. pt. 400 (1993).

***“Full-Time Employee”*** means (i) those direct employees of the Company and its Affiliates in the County performing a job and (ii) those individuals whose services are provided in the County on a contractual basis, whether directly with the Company or through a third-party contracting services to perform a job requiring a minimum of thirty-five (35) hours of an individual’s time each week during normal operations and/or the equivalent of full time employment in accordance with the standard practices of the Company as in effect from time to time.

***“Hazardous Materials”*** means any substance, material, or waste which is (i) defined now or hereafter as a “pollutant,” “contaminant,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “industrial waste,” or other similar term or phrase under any Environmental Laws (as defined above), (ii) any substance, the presence of which on, under or in the Project Site, or contained in any structure thereon, is prohibited or regulated by Environmental Laws or which requires investigation, removal, response or remediation under any Environmental Laws, (iii) petroleum or any fraction or by-product thereof, polynuclear or polycyclic aromatic hydrocarbons, asbestos, trinitrotoluene, any polychlorinated biphenyl, urea formaldehyde foam insulation, radon or any other radioactive or explosive substance, methane, volatile hydrocarbons, or an industrial solvent.

***“Historic Properties”*** means any prehistoric or historic district, site, battlefield, gravesite, cemetery, building, structure, object, artifact, record or remains, including properties of traditional religious and cultural significance to a Native America tribe.

***“IDB”*** has the meaning set forth in the Preamble to this Agreement.

***“IDB Funds”*** has the meaning set forth in Section 6.1(c) hereof.

***“Impermissible Encumbrances”*** has the meaning set forth in Section 5.1(c) hereof.

***“I.R.C.”*** means the Internal Revenue Code of 1986, as amended.

***“Letter Ruling”*** has the same meaning as set forth in Code Section 67-1-109.



***“Liability”*** means any liability whatsoever (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for Taxes.

***“Local Development Project Coordinator”*** means the specific individual designated and paid by the applicable Public Authority to coordinate with, and advise the Company with respect to the matters contemplated herein and as may from time to time arise in an administrative, communications and facilitation context.

***“Local Governments”*** has the meaning set forth in the Preamble to this Agreement.

***“Main Facility Site”*** has the meaning set forth in Section 2.1 hereof.

***“MLGW”*** has the meaning set forth in Section 6.4(a) hereto.

***“Park”*** has the meaning set forth in the Recitals hereto.

***“Party”*** or ***“Parties”*** has the meanings set forth in the Preamble hereof.

***“Permit”*** means any permit, license, certificate of occupancy, order, certification, registration, approval or authorization issued under any law, regulation or ordinance, whether federal, State, or local.

***“Permitted Encumbrances”*** has the meaning set forth in Section 5.1(c) hereof.

***“PILOT Agreement”*** has the meaning set forth in Section 4.2 (c) hereof.

***“Production Position”*** means a Full-Time Employee position that is directly involved in the production of goods at the Facility Site.

***“Project”*** has the meaning set forth in the Recitals hereto.

***“Project Benefits”*** has the meaning set forth in Section 11.6 hereof.

***“Project Schedule”*** has the meaning set forth in Section 3.1 hereof.

***“Project Site”*** has the meaning set forth in Section 2.1 hereof.

***“Protected Species”*** means any species that is determined to be an endangered, threatened, or candidate species pursuant to the federal Endangered Species Act or any species that is determined to be endangered, threatened, rare or of special status or is otherwise protected under any State or local law.

***“Public Authorities”*** has the meaning set forth in the Preamble hereof.

***“Public Policy Advocacy Coordinator”*** means the specific individual designated and paid by the applicable Public Authority to coordinate with and advise the Company with respect to public policy.

***“Public Relations & Communications Coordinator”*** means the specific individual designated and paid by the applicable Public Authority to coordinate with and advise the Company with respect to public relations and communications.

***“Qualified Training Costs”*** means all of the following:

(a) With respect to individuals conducting training of employees (trainers), (i) if employed by the Company or an Affiliate thereof, the charges attributable to the costs of their wages and benefits (or at standard per diem charges pursuant to State travel regulations); or (ii) if employed by a third-party the charges for such training services.

(b) With respect to travel expenses for trainers, (i) round trip airfare and per diems (in accordance with State travel regulations); and (ii) round trip airfare for trainers traveling to suppliers.

(c) Any additional costs for travel or accommodations associated with training outside of the training center (in accordance training program guidelines), including to such items as hotel expenses and temporary training space, whether at the Project Site, in the Memphis area, or at other Company facilities worldwide.

(d) All costs associated with:

(i) the providing by the State of pre-employment training, including orientation training, core skills training, basic skills training, soft skills training and hands-on assembly training;

(ii) the providing by the State of on-the-job training, including continued pre-employment training, post-employment training, to include training related to automotive manufacturing, procedures training, and training for existing product modifications and re-tooling; with the length of the training period for the combination of pre-employment and on-the-job training being based upon the particular job classification, and the skill levels of the trainees;

(iii) the providing by the State of instructor development;

(iv) the providing by the State of management training; and

(v) development by the State of curricula and preparation of customized training videos which include training course content, tutorials concerning equipment use and safety and preparation of training manuals and other materials necessary to support the training programs.

***“Request for Payment”*** has the meaning set forth in Section 6.1(f) hereof.

***“Start of Production”*** means the date on which the Company places the Facility into commercial production as determined for United States Federal Income Tax purposes.

***“State”*** has the meaning set forth in the Preamble.

***“Survey”*** has the meaning set forth in Section 3.3 hereof.

***“Tax”*** or ***“Taxes”*** means any federal, State, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including under I.R.C. § 59A), custom duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

***“Tax Coordinator”*** means the specific individual designated and paid by the applicable Public Authority to coordinate with and advise the Company with respect to all matters relating to Taxes imposed by the State and Local Governments, including matters of compliance and obtaining all exemptions for which the Company is or may become eligible under applicable State and local laws.

***“Title Commitment”*** has the meaning set forth in Section 5.1(b) hereof.

***“Title Company”*** has the meaning set forth in Section 5.1(b) hereof.

***“Title Policy”*** has the meaning set forth in Section 5.1(b) hereof.

***“TVA”*** has the meaning set forth in Section 6.4(d) hereof.

***“U.S.C.”*** means the United States Code.

***“Vendors”*** has the meaning set forth in Section 6.1(e) hereof.

***Signature Pages Follow***